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MICRO, SMALL & MEDIUM ENTERPRISES DEPARTMENT

NOTIFICATION

The 24th January, 2024

No.566—MSME-IPE-MISC-0060/2019/MSME.— In pursuance of the provisions made in the MSME Development Act, 2006, the State Government is pleased to formulate "Odisha Procurement Preference Policy for Micro and Small Manufacturing Enterprises-2023" as attached herewith.

This has been approved by the State Cabinet in its 70th meeting held on the 22nd January, 2024. This policy comes into effect from the date of its Notification.

ORDER-Ordered that the Notification be published in the Extraordinary issue of *Odisha Gazette* and copy thereof be forwarded to all Departments of Government/ all Heads of Department/ Accounts General(A & E), Odisha/ all RDCs/ all Collectors/ all DICs.

By Order of the Governor
SASWAT MISHRA
Principal Secretary to Government

Odisha Procurement Preference Policy for Micro and Small Manufacturing Enterprises-2023 (MSME Department Notification No. 66/MSME, dated the 24th January, 2024.

Government of India has enacted MSME Development Act' 2006 for facilitating promotion and development and enhancing competitiveness of micro, small and medium enterprises. The Act confers power on the State Government to notify Procurement Preference Policy in respect of procurement of goods and services produced and provided by micro and small enterprises.

In pursuance of the above-said provision of the MSME Development Act' 2006, the State Government had notified Odisha.Procurement Preference Policy for Micro and Small Enterprises' 2015 vide MSME Department Notification No.4318/MSME., dated the 10th June, 2015.

As more than 7 years have passed by in the meantime and since the State Government wants to boost manufacturing activities in Odisha; the State Government hereby brings a new policy in the name of 'Odisha Procurement Preference Policy for Micro and Small Manufacturing Enterprises — 2023', as given below, with effect from the date of Notification.

Odisha 'Procurement Preference Policy For Micro and Small Manufacturing Enterprises of Odisha

1. Introduction

- (A) To boost manufacturing activities in the State, Micro and Small Manufacturing Enterprises located in Odisha (hereinafter referred to as Odisha Small Manufacturing Enterprises — OSMEs) shall be given some preferences and relaxations, as mentioned below, in procurement of goods by State Government Departments and their subordinate offices/organisations/agencies, etc. As per the current definition MSMEs in the MSME Development Act'2006, manufacturing business entities located in Odisha having total investment in Plant and Machinery upto Rs.10 Crores and annual turn-over upto Rs. 50 Crores will be categorized as OSMEs. Start-up companies or business entities, registered with Start-Up Odisha (a Government of Odisha Company under MSME Department), working in Odisha

in manufacturing sector and having total investment in Plant and Machinery upto Rs.10 Crores and annual turn-over upto Rs.50 Crores shall also be treated as OSMEs.

- (B) To be eligible for benefits under this policy, an OSME must have a valid Udyam Registration Number (URN) and must submit an undertaking in shape of affidavit (in the format as given in *Annexure-A*) at the time of bidding.

2. Applicability

This policy is applicable to all State Government Departments and their subordinate offices/authorities, called in whatever name, including societies, cooperative societies, autonomous bodies, ULBs/PRIs, State PSUs/Corporations, educational institutions, etc. functioning under administrative control of State Government Departments. It will also be applicable to office of Hon'ble Governor, Hon'ble High Court and Lower Courts, Tribunals, Commissions, etc. In general, this policy can be said to be applicable to all such organisations located in the State of Odisha wherein procurement of goods is done out of State Government fund or State Government arranged fund.

3. Deviation from this Policy (Alternative Policy)

If any State Government organisation, as mentioned above, wants to formulate a policy different from this policy; it will submit a proposal to MSME Department with proper justification for seeking an alternative policy and the proposal shall be put up before a committee headed by Chief Secretary for appropriate decision. If the committee recommends the proposal, it will then be put up for obtaining approval of Government in MSME Department and the alternative policy will become effective on getting approval of Government in MSME Department. Any subsequent amendment or change to such alternative policy shall also require recommendation of the said Committee followed by approval of Government in MSME Department.

4. Exclusion

This policy will, however, not be applicable to procurement of services including work contracts (including EPC contracts).

5. Preferences and Relaxations to OSMEs

The policy provides for following procurement preferences and relaxations to OSMEs.

(A) Procurement from OSMEs having Rate Contract

As per Rate Contract Rules' 2014 of State Government, Directorate of Export Promotion and Marketing (DEPM), Odisha — under administrative control of MSME Department — enters into rate contract agreement, having specified validity period, with selected OSMEs for supply of goods of specified quality at specified rate. Details of valid rate contracts are available in the website of DEPM. Procurement of such goods shall be mandatorily done from any such rate contract holder as per the specified rate. If required, goods can be procured from multiple rate contract holders. No tender/bidding shall be done amongst rate contract holders. Selection of rate contract holder(s) will be purely as per the discretion of the procurement entity. However, preference shall be given to rate contract holder(s) of the district concerned. Procurement of such goods outside Rate Contract System is not permissible.

(B) Exclusive List (Procurement from OSMEs through Intra-State Tender)

- (i) The State under "*Exclusive List*"- as given in **Annexure B** - which are manufactured by a fairly large number of OSMEs. Procurement of such goods shall be made on the basis of competitive bidding through intra-state tender amongst OSMEs only. Government, by notification issued from time to time, may enlist goods
- (ii) The State Government may also, by notification issued from time to time, remove enlisted goods from "Exclusive List" on any valid ground such as lack of reasonable competition in the intra-state tender process.

(C) Price and Purchase preference to OSMEs in Open Tenders

(Where the Procurement Quantity is divisible)

Procurement of goods not covered under Rate Contract and Exclusive List shall be made through open tender procedure.

- (i) If an OSME, without availing any exemption/relaxation as mentioned in Para 5(D)(ii), becomes eligible to bid and emerges as L1 bidder, it will get the entire procurement order at L1 rate.
- (ii) If a non-OSME becomes L1 bidder, the lowest-bidding OSME bidder (i.e. the OSME bidder whose bid is lowest amongst all OSME bids) will get Price Preference or Purchase Preference as given below.

Price Preference: If his/her bid remains within (L1 bid + 10%) range, then he/she will get order to supply 25% of the procurement quantity at his/her

bid rate (not at L1 rate); and the L1 bidder will get order to supply 75% of the procurement quantity at L1 rate. If the lowest-bidding OSME bidder declines the supply order, then the next higher OSME bidder — and so on and so forth — whose bid remains within (L1+10%) range shall be offered to supply 25% of the procurement quantity at his/her bid rate.

(In case when the number of lowest-bidding OSME bidders is two or more, then order to supply 25% of the procurement quantity shall be equally divided amongst those out of them who are willing to execute the supply order.)

But, if all OSME bidders, whose bids remain within (L1+10%) range, one by one decline the supply order; then the provision of Purchase Preference, as given below, shall become applicable to other OSME bidders whose bids are higher than (L1+10%) range.

(Examples at **Annexure — C**)

Purchase Preference: If his/her bid is higher than (L1 bid+10%) range, then he/she will get order to supply 15% of the procurement quantity at L1 rate (not at his/her bid rate); and the L1 bidder will get order to supply 85% of the procurement quantity at L1 rate. If the lowest-bidding OSME bidder declines the supply order, then the next higher OSME bidder shall be offered to supply 15% of the procurement quantity at L1 rate. If he/she also declines the supply order, then the L1 bidder will get supply order for 100% of the procurement quantity.

(In case when the number of lowest-bidding OSME bidder is two or more, then order to supply 15% of the procurement quantity shall be equally divided amongst those out of them who are willing to execute the supply order.)

(Examples at **Annexure-C**)

- (iii) If after placement of order, OSME(s) fail(s) to supply the ordered quantity either in part or full; then procurement of such defaulted balance quantity shall be done from the L1 bidder at L1 rate, subject to his willingness.

(Note: Some examples are given in *Annexure-C*)

(NOTE: This policy is not applicable to procurement of goods through open tender where procurement quantity is not divisible; e.g. procurement of one transformer, etc..)

(D) Exemptions/Relaxations to OSMEs in Tender

(i) In intra-state Tender

In intra-state Tender (i.e., in procurement of Exclusive List goods) process, there shall not be any requirement of deposit of cost of tender paper and EMD. There shall not be any eligibility criteria pertaining to annual turnover and past experience. Performance Security, if any, shall not exceed 2.5% (Two point five percent) of the contract value or procurement value.

(ii) In Open Tender

OSMEs taking part in open tender processes shall be exempted from the requirement of depositing cost of Tender Paper and EMD. Annual turnover criteria shall be relaxed in favour of OSMEs by 90%. For example, if annual turnover criteria is Rs.10 Lakhs for non-OSMEs, it will be Rs.1 Lakh for OSMEs. They shall be fully exempted from past work experience criteria, if any. Performance Security, if any, shall be collected from them at concessional rate, i.e. @ 25% of what is applicable to non-OSMEs.

(Note: While fixing eligibility criteria such as turnover, production capacity, etc., procurement authorities must ensure that the eligibility criteria do not result in unreasonable exclusion of OSMEs who should otherwise be eligible. Specifying multiple certifications, unreasonable technical specifications, brand and model, unreasonably high turn-over, etc. in bid/tender document is likely to be viewed as restrictive and discriminatory practice against OSMEs.)

6. Blacklisting of OSMEs for Default

(A) While the State Government intends to facilitate growth of OSMEs by making this Procurement Preference Policy, it is expected that OSMEs will not compromise on quality and timely delivery of goods to be procured from them by procuring entities. In case of any deficiency in quality, quantity or timely delivery of goods ordered for procurement, the procuring entity concerned will be free to take suitable action against the defaulting OSME, including blacklisting (i.e. debarment) from future procurement for a certain period. However, it is also expected that the procuring entities, before taking any adverse decision against any OSME, will give adequate opportunity to the OSME concerned to defend its case and shall thereafter take reasonable decision in a just and fair manner. Any OSME aggrieved by any such blacklisting order or any other

adverse order made by any procuring entity can file written representation to the MSME Department, Government of Odisha for redressal of its grievance and decision of MSME Department thereon will be binding on the OSME as well as the procuring entity concerned.

- (B) An OSME may be selling a particular goods by manufacturing the goods itself or by trading in that goods (i.e. purchasing from some other supplier and selling under its own name) or by a combination of both. This Procurement Preference Policy is intended to facilitate sale of goods manufactured by OSMEs; not goods traded by them. If an OSME wants to sale goods through trading, then the benefits of this procurement preference policy shall not be applicable to it. Therefore, while bidding, OSMEs intending to avail benefits of this policy should clearly mention (and accordingly bid) the quantity of goods that can be actually manufactured by them in their own industry located in Odisha. If any complaint is received alleging supply of non-self-manufactured goods by any OSME availing benefits of this Procurement Preference Policy, procuring Authorities shall refer the matter to GM (DIC) of the District concerned in which the OSME concerned is located. The GM (DIC) shall get the matter inquired into by taking help of relevant Government Authorities and give a report to the procuring authority concerned at the earliest. In case it is established that the OSME has supplied the goods or intends to supply the goods by trading (and not by self-manufacturing), then the said OSME shall be blacklisted (i.e. debarred) from future procurement processes for a certain period as decided by the procuring entity. However, it is also expected that the procuring entities, before taking any adverse decision against any OSME, will give adequate opportunity to the OSME concerned to defend its case and shall thereafter take reasonable decision in a just and fair manner. Any OSME aggrieved by any such blacklisting order or any other adverse order made by .any procuring entity can file written representation to the MSME Department, Government of Odisha for redressal of its grievance.

(Note: Distinction between sale of goods by manufacturing and sale of goods by trading shall be made on the basis of definition of 'Manufacture' as given in Income Tax Act' 1961.)

(C) A black-listed OSME shall not be eligible to participate in any Government procurement action (including procurement action of semi-Government entities mentioned in Para-2) anywhere in Odisha during the blacklisted period.

7. Nodal Department/Officers

MSME Department shall be the Nodal Department and Director (EPM) shall be the Nodal Officer (at State Level) for monitoring implementation of this policy. GM (DICs) of each District shall be Nodal Officers at respective District level. Procuring entities may contact .respective GM (DIC) for any query vis-à-vis this policy. Aggrieved OSMEs may also contact respective GM (DIC) for redressal of their grievances.

8. Date of commencement of the Policy

This Policy will come into force from the date of its notification.

9. Repeal and Savings

Provisions under the Odisha Procurement Preference Policy for Micro and Small Enterprises-2015, as far it relates to procurement of goods, will stand repealed with the coming into force of this Policy.

However, the Odisha Procurement Preference Policy for Micro and Small Enterprises- 2015, as far it relates to procurement of services, will continue to remain in force until further order.

10. Transition Provision

This Policy shall not apply to any ongoing procurement process for which notice inviting tender or other form of procurement solicitation has been made prior to the coming into force of this Policy.

11. Clarification and Removal of doubts and difficulties

(a) This Policy is to be read in conjunction with Odisha General Financial Rules (OGFR) to the extent that whatever not specifically provided for in this Policy shall be governed by the general provisions of the OGFR.

(b) Any doubt or difficulty arising in the implementation of this Policy shall be referred to MSME Department whose decision in this regard shall be treated as final and binding on all concerned."

ANNEXURE-A**Odisha Procurement Preference Policy for Micro and Small Manufacturing Enterprises'2023 [See Para. 1 (B)]****BIDDER'S AFFIDAVIT****(Applicable to Bidders who fall under the definition of Odisha Small Manufacturing Enterprises)**

I, Shri/ Smt./ Ms..... (Designation) of (name of the Bidder Enterprise) solemnly state the following.

1. That annual turn-over of my enterprise is less than Rs. 50 Cr.
2. That my enterprise has a valid Udyam Registration bearing No. _____ within the jurisdiction of the State of Odisha.
3. That manufacturing plant/unit of my enterprise is located in Odisha in Village/ Town/City _____, Block/ULB _____ Dist. _____
4. That the goods for which I am submitting this bid are manufactured in the above-mentioned manufacturing plant/unit of my enterprise.
5. That the goods to be supplied by my enterprise shall be its own manufactured goods.
6. That my enterprise shall not supply goods which are not manufactured by my enterprise.
7. That my enterprise has not been blacklisted/debarred by any Government Organization from participating in current procurement process.
8. That my enterprise comes under the definition of Odisha Small Manufacturing Enterprise (OSME), as defined in the Policy, and is, therefore, eligible for preferences and relaxations provided in the Policy for OSMEs.
9. That I am submitting this affidavit in response to the tender No dated invited by (Organisation Name) for supply of (item name)

I certify that all information furnished by me as above are true and correct. If any information is found to be incorrect, I and my enterprise shall be liable for any punitive action as deemed appropriate by Competent Authority.

Date _____

Signature of Bidder _____

Name of the Bidder _____

Address _____

Mob No. _____

E-mail : _____

ANNEXURE-B

**Odisha Procurement Preference Policy for Micro and Small
Manufacturing Enterprises' 2023 [See Para. 5 (B)]**

EXCLUSIVE LIST

(Contents under this list will be notified later.)

ANNEXURE-C**Odisha Procurement Preference Policy for Micro and Small Manufacturing Enterprises'2023 [See Para 5 (C)]****Examples****CASE-1**

Bidder	Bid	Rank	Bidder Type
A	Rs.100	L1	Non-OSME
B	Rs.108	L2	OSME
C	Rs.108	L2	OSME
D	Rs. 1 10	L3	OSME
E	Rs.125	L4	Non-OSME
F	Rs.138	L5	OSME

CASE-2

Bidder	Bid	Rank	Bidder Type
A	Rs.100	L1	Non-OSME
B	Rs.103	L2	Non-OSME
C	Rs.104	L3	OSME
D	Rs. 11 0	L4	OSME
E	Rs.115	L5	Non-OSME
F	Rs 11 7	L6	Non-OSME
G	Rs.120	L7	OSME
H	Rs.150	L8	OSME
J	Rs.155	L9	OSME

Scenario (Only Price Preference)

- ❖ A (i.e. L1) will get procurement order for 75% of quantity at L1 rate of Rs.100.
- ❖ B and C both (lowest-bidding OSME) will get procurement order for 12.50% of quantity each (total 25%) at their rate of Rs.108.
- ❖ If B declines the offer and C accepts the offer, then C will get procurement order for 25% of quantity at his rate of Rs.108.
- ❖ If B & C both decline the offer, then D will get procurement order for 25% of quantity at his rate of Rs.110. Then D executes the order successfully.
(**Note:** F will not get any benefit. Since D got Price Preference, F will not be eligible to claim Purchase Preference.)

Scenario-1 (Price Preference)

- ❖ A (i.e L1) will get procurement order for 75% quantity at L1 rate of Rs. 100.
- ❖ C (lowest-bidding OSME) will get procurement order for 25% quantity at his rate of Rs.104. But if C declines the offer, then D will get procurement order for 25% quantity at his rate of Rs.110. Then D successfully executes the order

Scenario-2 (No Price Preference; Only Purchase Preference)

- ❖ If D also declines the procurement order/ offer. Then A will get procurement order for 85% quantity at L1 rate. G, if he accepts L1 rate, will get procurement order for 15% at L1 rate. If G does not accept L1rate but H accepts it, then H will get procurement order for 15% quantity at L1 rate. But if H also refuses to accept the order, then A will get procurement order for 100% quantity.
(**Note :** J will not get any benefit.)

CASE-3

Bidder	Bid	Rank	Bidder Type
A	Rs.100	L1	Non-OSME
B	Rs. 111	L2	Non-OSME
C	Rs. 116	L3	Non-OSME
D	Rs.120	L4	Non-OSME
E	Rs.133	L5	OSME
F	Rs.152	L6	OSME
G	Rs.152	L6	OSME

(No OSME bids within L1 +10% range)

Scenario (Only Purchase Preference)

- ❖ A (i.e. L1) will get procurement order for 85% quantity at L1 rate of Rs.100.
- ❖ E, if he accepts L1 rate, will get procurement order for 15% quantity at L1 rate.
- ❖ If E does not accept L1 rate but F and G accept it, then both F and G will get procurement order for 7.5% quantity each (total 15% quantity) at L1 rate
- ❖ But if F refuses to accept L1 rate but G accepts L1 rate, then G will get procurement order for 15% quantity at L1 rate.